

# WALLER, STROUD & STEWART, LLP

Attorneys At Law

August 8, 2005

*Via Facsimile (202) 219-3923*

*and Fed Ex Tracking #7923 5322 1657*

Jeff S. Jordan, Esq., Supervisory Attorney  
Complaints Examination & Legal Administration  
Office of General Counsel  
FEDERAL ELECTION COMMISSION  
999 E Street, NW  
Washington, DC 20463

Re: FEC File: MUR 5668  
Gerald F. Meek, Complainant;  
Capital Outdoor, Inc., Respondent

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
2005 AUG 10 10 12: 08

Dear Mr. Jordan:

I represent Capital Outdoor, Inc., in connection with its outdoor advertising operations in North Carolina. My client forwarded me correspondence it received from you in the referenced matter and requested my assistance in responding to Mr. Meek's allegations. I understand that Mr. Robert Sykes and Mr. Steve Bryant signed the FEC Statement of Designation of Counsel on behalf of the respondent, and faxed the completed form last week to the FEC Office of General Counsel.

As a factual background of customary practices in the outdoor advertising industry, generally followed by Capital, and with respect to the specific advertising campaign which has given rise to Mr. Meek's complaint, Capital submits the enclosed Affidavit of Robert G. Sykes, President of Capital Outdoor, Inc. Additionally, through his sworn affidavit, Mr. Sykes has responded to certain of Mr. Meek's specific allegations which my client contends are misleading, overstated or incomplete.

When read together Mr. Meek's sworn complaint and Mr. Sykes' responsive affidavit, support the conclusion Capital Outdoor, Inc., has not violated the Federal Election Campaign Act of 1971, as amended ("the Act"), or the FEC regulations adopted to implement and enforce the Act, that no action should be taken against Capital and that the complaint should be dismissed.

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Among other things, the Act defines a "contribution" as "anything of value" made "for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A). An "election" is "the process by which individuals...seek nomination for election, or election, to Federal office," and the "election cycle" ends on the date on which the general election for the office or seath that the individual seeks is held."

Although Mr. Billy Creech was a candidate "*for Congress in 2004*," Mr. Meek candidly admits that he "*was defeated in his bid for election*." Affidavit ¶2-3. Mr. Meek alleges that Mr. Creech "*is considered to be a potential candidate for the same race in 2006*," without stating a basis for that allegation, identifying upon whose "considered" opinion he relied in making the allegation, or pointing the FEC to any extrinsic evidence in support of such an allegation. On its face, that statement appears to have been included by Mr. Meek in an effort to meet a fundamental requisite to finding a violation of the Act: that Capital made an illegal "*contribution*," as defined by the Act by failing to cover, remove or "blank out" a message promoting Mr. Creech's bid for Congress in the **2004 election**.

Mr. Meek attempts to create an illusion of intentional consciousness of the alleged violation by alleging that Capital "continued to post billboards," in the face of his complaint, that Capital did not respond to his first complaint and, incorrectly stating, that "billboards...continued to stand in parts of the 2<sup>nd</sup> district" when he wrote his second letter. Mr. Sykes responded to those allegations with plausible, candid explanations. It is worth noting that Mr. Meek submitted his affidavit June 24, 2005, a full two weeks after Capital located only one billboard which apparently its crews overlooked in its previous attempt to respond to Mr. Meek's complaint and, more importantly *after* notifying Mr. Meek of that corrective action. Mr. Meek's suggestion that a number of billboards still were standing when he wrote his second letter in early June as well as his failure to disclose Capital's voicemail advising him on or about June 10, 2005 that all billboards for the Creech campaign were covered is untrue in the first regard and misleading in the second.

Reviewing the entirety of the two affidavits submitted, the only reasonable inference which can be drawn is that the display of Mr. Creech's bid for the **2004 election** after that election cycle had no "value" whatever "for the purpose of influencing" an "election for Federal office," notwithstanding Mr. Meek's speculation that Mr. Creech might run again in 2006.

Absent evidence that the display of out-of-date messages was something of "value" to the defeated candidate, Mr. Meek's complaint must fail, as the display does not meet the Act's definition of a "contribution," legal or illegal.

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Finally, although maintaining that it has not engaged in a violation of the Act, Capital, on its oath has stated that it intends to exercise every reasonable effort to ensure that future political advertisements are not allowed to "ride" beyond their contract period.

Respectfully, Capital requests a finding that no violation has occurred and that the complaint against it be dismissed. In the alternative, if a technical violation of the Act is found, Capital requests that it be treated as an inadvertence that was without benefit to Mr. Creech or prejudicial to any other candidate and that no punitive action be taken against it.

Sincerely,

A handwritten signature in cursive script, appearing to read "Betty Waller".

Betty S. Waller

BSW/st

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BEFORE THE FEDERAL ELECTION COMMISSION  
COMMISSION FILE #: MUR5668

NORTH CAROLINA

WAKE COUNTY

AFFIDAVIT OF ROBERT G. SYKES

THE UNDERSIGNED, being first duly sworn, states as follows:

1. I am over 18 years of age, am competent to testify and the following statements are based on my own knowledge.
2. I am President of Capital Outdoor, Inc., respondent in FEC File#MUR5668, and have authority to make the statements contain in this affidavit. I have reviewed the affidavit of Gerald F. Meek, Chairman, North Carolina Democratic Party, which was submitted to the Federal Elections Commission on June 24, 2005, alleging conduct by Capital Outdoor which Mr. Meek claims to be a violation of federal election laws. In general, Mr. Meek's affidavit is misleading; a number of the allegations are simply untrue.
3. Capital Outdoor is in the business of providing space on outdoor advertising signs, billboards, for the communication of messages to the general travelling public including, for example, political messages supporting or opposing referendums on issues to be decided by voters, statements, views and endorsements by political committees and parties, and advertising in support or opposition to candidates for federal, state and local elections.
4. In October, 2004, Capital and the Creech for Congress campaign committee entered into Capital's standard written contract for outdoor advertising displays supporting Mr. Creech's election in November 2004 as the Representative from the 2<sup>nd</sup> Congressional District of North Carolina. The Creech for Congress campaign purchased, and Capital received payment from the campaign committee for, advertising space on seven of Capital's billboards located in various areas of eastern North Carolina. Per the contract the advertisements were to be displayed from just prior to the November 2004 election until just after the election; the stated display period was for a period of one month, from mid-October through mid-November, 2004. Mr. Creech's candidacy was not successful, and he was defeated in the November 2004 election.

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Capital had no further communications or business dealings with Mr. Creech or the Creech for Congress campaign committee following the contract I have described.

5. Mr. Meek's specific allegations that Capital has "continued to post billboards" for the Creech for Congress campaign is inaccurate and possibly misleading. Capital only "posted" billboards for the Creech for Congress campaign one time, for a contract period of one month. Capital has not "continued" to post billboards nor did Mr. Creech or his campaign committee ever request any additional postings; which would explain Mr. Meek's observation that the last campaign report filed with FEC did not reflect that Capital "continued posting" billboards as Mr. Meek alleged.

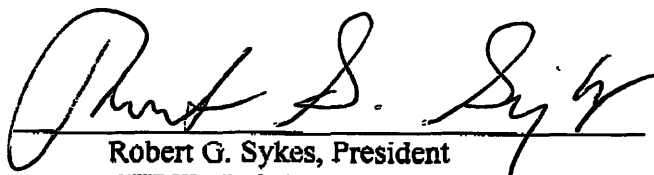
6. As with any other display contract, when the Creech for Congress contract period expired, that advertising space became available for sale by Capital's account executives. Typically, the demand for outdoor advertising displays in rural areas of North Carolina is much less than in urban areas. By the nature of the billboard business most companies, and specifically Capital, own many structures spread across large areas of the state. It is a common practice in the billboard industry to let expired displays "ride" until the space is sold again, to reduce the costly overhead caused by dispatching crews first to paint over or "blank out" an expired display, then return to paint or post a new display when the space is sold again.

7. The 2<sup>nd</sup> Congressional District of North Carolina encompasses a large rural area of the state. Although the billboards purchased by the Creech for Congress campaign were available for sale at all times after the Creech contract expired in mid-November 2004, the space had not been sold to another advertiser as of May 5, 2005 when Capital received Mr. Meek's correspondence alleging that Capital's failure to blank out the Creech ads constituted, in his words, "an illegal, in-kind corporate contribution to Mr. Creech's campaign." Contrary to Mr. Meek's allegation that Capital did not respond to his accusation, upon receipt of his letter, Capital immediately dispatched crews to blank out all of the advertisements. We believed that had been done.

8. Mr. Meek correctly stated in his affidavit that he wrote Capital again, around the first of June, 2005. When we received that letter we believed all of the Creech advertisements had been

covered; however, when we researched our records and the work that had been done in response to his first letter, we found that one display had been overlooked, through simply inadvertence. Again, we immediately dispatched a crew to blank out the Creech advertisement. That remaining billboard was covered on or about June 10, 2005. After that last billboard was covered, my secretary called Mr. Meek to advise him; however, he was not available. She left a voicemail for Mr. Meek to inform him Capital had verified that all the Creech displays had been blanked out.

9. Capital in no way intended to contribute anything of value to the Creech for Congress campaign or otherwise run afoul state or federal election laws. Once Mr. Creech was defeated in the 2004 election it seems inconceivable that the advertisements for that campaign would be viewed as having any value to him. Nevertheless, having been accused by Mr. Meek of violating federal election laws, Capital's consciousness has been raised as to the potential for such allegations in the future and will exercise every reasonable effort to ensure that political advertisements are not allowed to "ride" after future elections.

  
Robert G. Sykes, President  
CAPITAL OUTDOOR, INC.

Sworn to and subscribed before me

this 8 day of August, 2005

  
Notary Public

My commission expires:

July 22, 2008

